

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Michael Talisayan	Team: Squad #11	CCRB Case #: 202003687	<input type="checkbox"/> Force	<input checked="" type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Saturday, 05/30/2020 7:15 PM	Location of Incident: East 15th Street and Union Square East	Precinct: 13	18 Mo. SOL 11/30/2021	EO SOL 5/4/2022	
Date/Time CV Reported Sat, 05/30/2020 7:50 PM	CV Reported At: CCRB	How CV Reported: On-line website	Date/Time Received at CCRB Sat, 05/30/2020 7:50 PM		

Complainant/Victim	Type	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. POM Nicholas Sommella	22101	963764	111 PCT
2. SGT Jewwei Shih	05610	939462	111 PCT

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. POM John Gavan	7615	968431	112 PCT
2. POM James Hu	18657	943378	111 PCT
3. POM David Castellano	11180	956502	111 PCT
4. POM Brian Jennings	01558	947105	111 PCT
5. POF Clare Boyle	12827	960273	111 PCT
6. POM Nicholas Kostas	05350	940343	111 PCT

Officer(s)	Allegation	Investigator Recommendation
A.POM Nicholas Sommella	Abuse: Police Officer Nicholas Sommella questioned § 87(2)(b) § 87(2)(b)	
B.POM Nicholas Sommella	Discourtesy: Police Officer Nicholas Sommella spoke discourteously to § 87(2)(b) § 87(2)(b)	
C.SGT Jewwei Shih	Abuse: Sergeant Jewwei Shih threatened § 87(2)(b) § 87(2)(b) with the use of force.	

Case Summary

On May 30, 2020, § 87(2)(b) § 87(2)(b) filed this complaint online with the CCRB.

On May 30, 2020, at approximately 7:15 p.m., § 87(2)(b) § 87(2)(b) approached a barricade located at the intersection of § 87(2)(b) in Manhattan. PO Nicholas Sommella of the 111th Precinct asked § 87(2)(b) § 87(2)(b) whether he lived on the block and asked him to provide identification (**Allegation A: Abuse of Authority** – § 87(2)(g) § 87(2)(b) § 87(2)(b) refused to provide his documentation. PO Sommella told § 87(2)(b) § 87(2)(b) that if he did not provide documentation or state where he lived, § 87(2)(b) § 87(2)(b) would have to “stand in the street all fucking night” (**Allegation B: Discourtesy** – § 87(2)(g) § 87(2)(b) § 87(2)(b) approached PO David Castellano of the 111th Precinct, they allegedly had a conversation in which § 87(2)(b) § 87(2)(b) allegedly asked PO Castellano if he was going to beat him up. Sgt. Jewwei Shih of the 111th Precinct approached § 87(2)(b) § 87(2)(b) and allegedly stated, “I will if I have to” (**Allegation C: Abuse of Authority** – § 87(2)(g) § 87(2)(b) § 87(2)(b)).

The nature of the incident did not require the use of BWC as per the Patrol Guide.

§ 87(2)(b) § 87(2)(b) was not issued a summons nor was he arrested during the incident.

On August 21, 2020, this complaint was reassigned to Inv. Michael Talisayan following Inv. William McClure’s departure from the agency.

Findings and Recommendations

Allegation (A) Abuse of Authority: Police Officer Nicholas Sommella questioned § 87(2)(b) § 87(2)(b)

§ 87(2)(b) § 87(2)(b) § 87(2)(b) approached a barricade at the intersection of Union Square East and East 15th Street. § 87(2)(b) § 87(2)(b) told two unidentified uniformed female officers that he wanted to get through. § 87(2)(b) § 87(2)(b) spoke primarily with PO Sommella, who was among a group of officers who asked him for his identification and where he lived. § 87(2)(b) § 87(2)(b) told PO Sommella that he lived on the block; § 87(2)(b) § 87(2)(b) refused to provide his identification to PO Sommella. § 87(2)(b) § 87(2)(b) eventually provided his address to an unidentified officer and permitted to go through the barricade [Board Review 02].

PO Sommella testified that he and the officers at the barricade had been instructed by Sgt. Shih to confirm if civilians seeking to go past the barricade lived on the block or had business on the street before allowing them through in order to restrict the flow of movement on the street. To make such confirmation, PO Sommella asked civilians if they had photo identification or receipts to indicate that they resided on or had business on § 87(2)(b) § 87(2)(b). When § 87(2)(b) § 87(2)(b) approached the barricade, PO Sommella asked § 87(2)(b) § 87(2)(b) “Do you live on this block?” and asked if he had identification that shows that he lived on the block. § 87(2)(b) § 87(2)(b) told PO Sommella, “I live on this block. I don’t have to show you ID that says I do.” § 87(2)(b) § 87(2)(b) refused to provide his documentation and was told to go around. § 87(2)(b) § 87(2)(b) approached PO Castellano and told him that PO Sommella was not letting him through. PO Castellano also asked § 87(2)(b) § 87(2)(b) for his identification. § 87(2)(b) § 87(2)(b) then asked for a supervisor. PO Castellano went to get Sgt. Shih. Sgt. Shih approached § 87(2)(b) § 87(2)(b) and provided the same instructions PO Sommella explained to § 87(2)(b) § 87(2)(b) earlier. § 87(2)(b) § 87(2)(b) was not allowed through the barricade. He walked irate in a southbound direction. During the same interview, PO Sommella was presented with body-worn camera footage from PO John Gavan [Board Review 01, timestamps 01:34 to 01:43 in the video player]. PO Sommella amended his testimony and stated that § 87(2)(b) § 87(2)(b) was at some point allowed through the barricade. PO Sommella did not explain how § 87(2)(b) § 87(2)(b) was allowed through the barricade [Board Review 03].

PO Castellano did not recall § 87(2)(b) § 87(2)(b) [Board Review 04].

Sgt. Shih did not recall any interaction between PO Sommella and § 87(2)(b) § 87(2)(b). The intersection of East Union Square and East 15th Street was a restricted area because the officers were guarding a mobile command center. The officers at the barricade asked people if they lived on

the block or had business on the block. If people said “yes” to any of these questions, officers moved the barricade and allowed them to enter. If they said “no,” they were asked to go around the street. None of the officers asked for identification from people trying to get through the barricade [Board Review 05].

To perform public service functions, officers may approach and request information from people for “an objective credible reason” that is not “necessarily indicative of criminality” People v. Debour (168 A.D.2d 259) [Board Review 12].

§ 87(2)(b), § 87(2)(g)

§ 87(2)(b), § 87(2)(g)

Allegation (B) Discourtesy: Police Officer Nicholas Sommella spoke discourteously to § 87(2)(b)

§ 87(2)(b)

When PO Sommella asked for § 87(2)(b)'s identification and to provide his address, § 87(2)(b) refused to comply with either request. PO Sommella told § 87(2)(b) that if he refused to answer questions or provide identification, he would have to “stand in the street all fucking night” [Board Review 02].

PO Sommella admitted to telling § 87(2)(b) that if he did not provide documentation stating where he lived, he would have to “stand in the street all fucking night” [Board Review 03]. PO Sommella used profanity because he was telling § 87(2)(b) that he could either comply or just stand there. He did not have any other reason aside from the profanity “slipping out.”

NYPD Patrol Guide Procedure 200-02 indicates that police officers must value human life, respect the dignity of each individual and render their services with courtesy and civility [Board Review 06]. DAO-DCT Case Number 2018-18951 [Board Review 07] states that profane remarks, made during stressful, violent confrontations or while an officer is trying to gain control of a chaotic situation, are not misconduct.

§ 87(2)(b), § 87(2)(g)

Allegation (C) Abuse of Authority: Sergeant Jewwei Shih threatened § 87(2)(b) § 87(2)(b) with the use of force.

Body-worn camera footage from PO Gavan captures § 87(2)(b) standing behind the barricade at the intersection of Union Square East and East 15th Street. § 87(2)(b) asks the officers, including PO Gavan and PO Sommella, for a sergeant. He states, “You don’t know him? Do any of you guys know him? 18657, do you know [the sergeant]? No? You don’t know who the sergeant was? Gavan, do you know him?” The officers tell § 87(2)(b) that they do not know the sergeant. A third officer, PO James Hu (Shield # 18657) of the 111th Precinct, directs § 87(2)(b) away from the street. § 87(2)(b) leaves [Board Review 01, timestamps 00:00 to 02:13 in the video player]. The entirety of the footage does not capture any interaction between Sgt. Shih and § 87(2)(b).

§ 87(2)(b)

§ 87(2)(b) stated that after his conversation with PO Sommella, he provided an unidentified officer with the address of his residence and was permitted through the barricade. PO Castellano approached § 87(2)(b) and told him that he wanted to speak with him. They were approximately 10 to 15 feet away from the barricade. As he spoke, from about two feet, PO Castellano was gesturing while holding a baton. § 87(2)(b) told PO Castellano that he was making him nervous and asked if he was going to beat him up. Sgt. Shih, an Asian male with blue chevrons

on his sleeve, approached within 15 seconds of their conversation and stated, “I will if I have to.”

§ 87(2)(b) then left and went up to his apartment [Board Review 02].

Sgt. Shih testified that he was behind the barricade. Sgt. Shih did not recall encountering § 87(2)(b). Sgt. Shih was presented with body-worn camera footage from PO Gavan [Board Review 01, timestamps 00:00 to 02:10 in the video player]. Sgt. Shih did not recall the individual in the frame, § 87(2)(b). In the frame, a white male wearing a black t-shirt and blue shorts is speaking to officers from behind the barricade [Board Review 05].

PO Sommella testified that after he spoke to § 87(2)(b) he went to PO Castellano, who was also behind the barricade, and told PO Castellano that PO Sommella was not letting him through. § 87(2)(b) asked PO Castellano for a supervisor, and he went to get Sgt. Shih. Sgt. Shih explained to § 87(2)(b) that the street was blocked off and that he needed to provide identification to be allowed through. PO Sommella did not recall Sgt. Shih saying, “I will if I have to” or saying that he would use physical force against § 87(2)(b). PO Sommella was presented with PO Gavan’s body-worn-camera footage [Board Review 01, timestamps 01:30 to 01:38 in the video player] and identified the officer who directed § 87(2)(b) away from the street as PO Hu of the 111th Precinct [Board Review 03].

PO Castellano did not recall any conversation between himself and § 87(2)(b) [Board Review 04].

PO Hu testified that PO Castellano spoke to § 87(2)(b) at the barricade. PO Castellano told § 87(2)(b) that he would not be allowed through the barricade unless he provided identification. At some point, Sgt. Shih was arguing with § 87(2)(b) by the west side of the barricade. PO Hu was approximately six barricades away from Sgt. Shih. Aside from their yelling, PO Hu did not hear their exact words. PO Hu did not hear Sgt. Shih express that he would use physical force against § 87(2)(b) [Board Review 08].

§ 87(2)(b), § 87(2)(g)

Civilian and Officer CCRB Histories

- This is the first complaint to which § 87(2)(b) § 87(2)(b) has been a party [Board Review 09].
- PO Sommella has been a member of service for three years. One complaint, and three allegations, have been filed against him. This complaint was withdrawn.
- Sgt. Shih has been a member of service for fifteen years. Three complaints, and three allegations, have been filed against him. None of these allegations were substantiated.

Mediation, Civil and Criminal Histories

- This case was referred to the Mediation Unit on June 25, 2020. On July 22, 2020, § 87(2)(b) requested that the investigation be resumed, and the case was returned to the Investigation Unit on the same date.
- On September 20, 2020, the Office of the New York City Comptroller indicated that there was no Notice of Claim related to this incident [Board Review 10].
- § 87(2)(b)

Squad No.: 11

